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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHI XIA,	Case No. 3:16-cv-00651-HDM-VPC
Petitioner,	ORDER
v.	
NEVADA ATTORNEY GENERAL, et al.,	
Respondents.	

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On April 25, 2018, this court granted petitioner’s motion to reopen this action and appointed the Federal Public Defender to represent petitioner (ECF No. 10). Kimberly Anne Sandberg of the Federal Public Defender’s office has filed a notice of appearance (ECF No. 11). As a scheduling order has not yet issued, counsel has also filed a motion for leave to file a protective first-amended petition and motion for leave to request a scheduling order to file a second-amended petition (ECF Nos. 12, 13). Good cause appearing, the motions are granted.

IT IS THEREFORE ORDERED that petitioner’s motion for leave to file a first-amended petition (ECF No. 12) is **GRANTED**. The Clerk shall **DETACH** and **FILE** the first-amended petition found at ECF No. 12-1.

IT IS FURTHER ORDERED that petitioner’s motion for scheduling order to file a second-amended petition (ECF No. 13) is **GRANTED**.

1 **IT IS FURTHER ORDERED** that petitioner shall have **sixty (60) days** from the
2 date of this order to FILE AND SERVE on respondents a second-amended petition for
3 writ of habeas corpus, which shall include all known grounds for relief.

4 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45) days**
5 after service of a second-amended petition within which to answer, or otherwise
6 respond to, the second-amended petition. If petitioner does not file a second-amended
7 petition, respondents shall have thirty (30) days from the date on which the second-
8 amended petition is due within which to answer, or otherwise respond to, petitioner's
9 first-amended petition.

10 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
11 in this case shall be raised together in a single consolidated motion to dismiss. In other
12 words, the court does not wish to address any procedural defenses raised herein either
13 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
14 answer. Procedural defenses omitted from such motion to dismiss will be subject to
15 potential waiver. Respondents shall not file a response in this case that consolidates
16 their procedural defenses, if any, with their response on the merits, except pursuant to
17 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
18 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
19 do so within the single motion to dismiss not in the answer; and (b) they shall
20 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
21 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
22 procedural defenses, including exhaustion, shall be included with the merits in an
23 answer. All procedural defenses, including exhaustion, instead must be raised by
24 motion to dismiss.

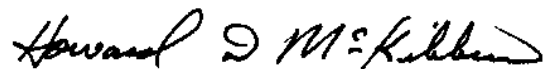
1 **IT IS FURTHER ORDERED** that, in any responsive pleading, respondents shall
2 specifically cite to and address the applicable state court written decision and state
3 court record materials, if any, regarding each claim within the response as to that claim.
4

5 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
6 service of the answer, motion to dismiss, or other response to file a reply or opposition,
7 with any other requests for relief by respondents by motion otherwise being subject to
8 the normal briefing schedule under the local rules.

9 **IT IS FURTHER ORDERED** that any state court record exhibits filed by the
10 parties herein shall be filed with an index of exhibits identifying the exhibits by number
11 or letter. The CM/ECF attachments that are filed shall further be identified by the
12 number or letter of the exhibit in the attachment.
13

14 **IT IS FURTHER ORDERED** that the parties **SHALL SEND** courtesy copies of all
15 exhibits to the Reno Division of this court. Courtesy copies shall be mailed to the Clerk
16 of Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff
17 Attorney" on the outside of the mailing address label. Additionally, in the future, all
18 parties shall provide courtesy copies of any additional exhibits submitted to the court in
19 this case, in the manner described above.
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21 DATED: May 22, 2018.
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24 HOWARD D. MCKIBBEN
25 UNITED STATES DISTRICT JUDGE
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